

# SENATE BILL No. 311

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-37-4-6.

**Synopsis:** Admissibility of evidence. Provides that certain evidence that is not otherwise admissible may be admitted into evidence in cases involving matter harmful to minors. Provides that a hearsay statement or videotape of a witness who is a protected person may be admissible into evidence in criminal actions for certain offenses.

**Effective:** July 1, 2004.

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**Clark**

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January 12, 2004, read first time and referred to Committee on Judiciary.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 311

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 35-37-4-6 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) This section  
3 applies to a criminal action under the following:

- 4 (1) Sex crimes (IC 35-42-4).
- 5 (2) Battery upon a child (IC 35-42-2-1(2)(B)).
- 6 (3) Kidnapping and confinement (IC 35-42-3).
- 7 (4) Incest (IC 35-46-1-3).
- 8 (5) Neglect of a dependent (IC 35-46-1-4).
- 9 (6) **An offense involving matter harmful to minors under**  
10 **IC 35-49-3-3.**
- 11 (7) An attempt under IC 35-41-5-1 for an offense listed in  
12 subdivisions (1) through ~~(5)~~ (6).

13 (b) As used in this section, "protected person" means:

- 14 (1) a child who is less than fourteen (14) years of age; or
- 15 (2) a mentally disabled individual who has a disability attributable  
16 to an impairment of general intellectual functioning or adaptive  
17 behavior that:



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- 1 (A) is manifested before the individual is eighteen (18) years  
 2 of age;  
 3 (B) is likely to continue indefinitely;  
 4 (C) constitutes a substantial impairment of the individual's  
 5 ability to function normally in society; and  
 6 (D) reflects the individual's need for a combination and  
 7 sequence of special, interdisciplinary, or generic care,  
 8 treatment, or other services that are of lifelong or extended  
 9 duration and are individually planned and coordinated.
- 10 (c) A statement or videotape that:  
 11 (1) is made by a person who at the time of trial is a protected  
 12 person;  
 13 (2) concerns an act that is a material element of an offense listed  
 14 in subsection (a) that was:  
 15 **(A) witnessed by the person; or**  
 16 **(B) allegedly committed against the person; and**  
 17 (3) is not otherwise admissible in evidence;  
 18 is admissible in evidence in a criminal action for an offense listed in  
 19 subsection (a) if the requirements of subsection (d) are met.
- 20 (d) A statement or videotape described in subsection (c) is  
 21 admissible in evidence in a criminal action listed in subsection (a) if,  
 22 after notice to the defendant of a hearing and of ~~his~~ **the defendant's**  
 23 right to be present, all of the following conditions are met:  
 24 (1) The court finds, in a hearing:  
 25 (A) conducted outside the presence of the jury; and  
 26 (B) attended by the protected person;  
 27 that the time, content, and circumstances of the statement or  
 28 videotape provide sufficient indications of reliability.
- 29 (2) The protected person:  
 30 (A) testifies at the trial; or  
 31 (B) is found by the court to be unavailable as a witness for one  
 32 (1) of the following reasons:  
 33 (i) From the testimony of a psychiatrist, physician, or  
 34 psychologist, and other evidence, if any, the court finds that  
 35 the protected person's testifying in the physical presence of  
 36 the defendant will cause the protected person to suffer  
 37 serious emotional distress such that the protected person  
 38 cannot reasonably communicate.  
 39 (ii) The protected person cannot participate in the trial for  
 40 medical reasons.  
 41 (iii) The court has determined that the protected person is  
 42 incapable of understanding the nature and obligation of an

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1 oath.

2 (e) If a protected person is unavailable to testify at the trial for a  
3 reason listed in subsection (d)(2)(B), a statement or videotape may be  
4 admitted in evidence under this section only if the protected person was  
5 available for cross-examination:

6 (1) at the hearing described in subsection (d)(1); or

7 (2) when the statement or videotape was made.

8 (f) A statement or videotape may not be admitted in evidence under  
9 this section unless the prosecuting attorney informs the defendant and  
10 the defendant's attorney at least ten (10) days before the trial of:

11 (1) ~~his~~ **the prosecuting attorney's** intention to introduce the  
12 statement or videotape in evidence; and

13 (2) the content of the statement or videotape.

14 (g) If a statement or videotape is admitted in evidence under this  
15 section, the court shall instruct the jury that it is for the jury to  
16 determine the weight and credit to be given the statement or videotape  
17 and that, in making that determination, the jury shall consider the  
18 following:

19 (1) The mental and physical age of the person making the  
20 statement or videotape.

21 (2) The nature of the statement or videotape.

22 (3) The circumstances under which the statement or videotape  
23 was made.

24 (4) Other relevant factors.

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